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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/804,581
Filing Date: March 18, 2004
Appellant(s): LEVY ET AL.

Joel R. Meyer
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 03 June 2009 appealing from the Office action mailed 03 October 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The objection to the drawings and the rejection of claim 26 under 35 U.S.C. 112 are hereby withdrawn by the Examiner.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|-----------------|-----------------|---------|
| 6,018,768 | Ullman et al. | 01-2000 |
| US 2004/0139474 | Carro | 07-2004 |
| US 2002/0162118 | Levy et al. | 10-2002 |
| US 2002/0152388 | Linnartz et al. | 10-2002 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5-8, 11-16, 18, 20-24, and 26-29 are rejected under 35

U.S.C. 103(a) as being unpatentable over Ullman et al. (US Pat. No.: 6,018,768) and further in view of Carro (Pub. No.: US 2004/0139474).

As to claim 1, Fig. 2 of Ullman teaches the recited method of synchronizing broadcast content with dynamic network content at a network address. Regarding the first step of "extracting an identifier embedded in broadcast content," Fig. 2 of Ullman teaches that *"the URL decoder 24 is located at the server site, as opposed to the subscriber location. When the decoder 24 receives the video program signal, it strips out the URL codes on line 21 of the VBI and delivers these codes independently to an*

Internet server 28" (col. 5/lines 62-67). The recited second step of "using the identifier to identify corresponding network content" is inherent in the system of Fig. 2 as the extracted identifier is the URL for corresponding network content.

As to the recited "after the corresponding network content thereby has been identified, posting the corresponding network content on a network device located at the network address, the network device being responsive to requests sent to the network address to provide the network content over a network; wherein the broadcast content is synchronized with the corresponding network content," Ullman teaches that internet server **28**—equivalent to the recited "network device located at the network address"—receives the decoded URL which is "*subsequently delivered over the Internet [from server 28] to the user's PC 16.*" (col. 6/lines 1-2) but does not explicitly teach that said network content "posted" to the server, as claimed. Fig. 2 of Carro teaches an analogous system for synchronizing broadcast content with corresponding network content in which channel information server **309** stores a log (Fig. 7) of URLs corresponding to broadcast information, chronologically synchronized with the video program and available to the user at channel information server URL **701**. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the channel information server and universal time table taught by Carro into internet server **28** taught by Ullman to keep a record of the URLs extracted by server URL decoder **26** and that would be available to the user at a fixed network address (URL **701**). This would have been desirable so as to allow the user to have access to all the network content transmitted with a given program at a fixed address.

As to claim 2, Ullman teaches that the URLs transmitted with the video program are embedded into the vertical blank interval of the video program (col. 4/lines 59-62).

As to claim 5, the recited "wherein the identifier triggers automatic posting of the corresponding network content" is inherent in the system of Fig. 2.

As to claim 6, the recited "wherein the dynamic network content comprises sets of HTML content, each set corresponding to a particular item, each set being prepared prior to broadcast of programs relating to the particular items" is inherent in the system taught by Ullman and Carro. The universal time table **701** taught by Carro (see Carro, Fig. 7) is presented to the user as a table embedded in a website (available at the channel information server URL) which is updated as each URL is decoded from the video program by the URL decoder **26** (Ullman, Fig. 2). Updating table **701** inherently requires updating the HTML code to include the decoded URL and posting the updated table at the network address (e.g., the channel information server URL).

As to claim 7, it would have been obvious to one of ordinary skill in the art at the time of the invention to the URLs transmitted by Ullman could be links to purchase the items. Indeed, Ullman teaches that *"the act of purchasing a product seen on television can be streamlined—the consumer can be given the choice of buying the product instantly using the two-way capabilities of the system"* (col. 2/lines 37-40). As to the limitation that "the programs comprise shopping programs that are broadcast to sell the products or services," the systems of Ullman and Carro are designed to work with any broadcast program including paid promotional programming or "infomercials."

As to claim 8, the rejection of claim 6 is incorporated herein. The systems of Ullman and Carro are designed to work with any broadcast program including live broadcasts. The recited synchronization of broadcast content and network content is inherent in the systems of Ullman and Carro.

As to claim 11, the recited functionality "wherein the identifiers enable synchronizing of dynamic network content accessed by users at a single URL, and also provide a link to network information about the broadcast content" is inherent in the system taught by Ullman and Carro. Users can go to the channel information URL taught in Fig. 4 and 7 to see a dynamically updated list of the URLs embedded in the video program and utilize said links to view the associated network content. The hyperlink information **702** taught by Carro is equivalent to the recited link and the HTML content corresponding to hyperlink information 702 is equivalent to the "network information."

As to claim 12, clicking on—or otherwise selecting—the hyperlink information **702** taught by Carro is equivalent to the recited "request from the user" and will inherently cause the system to display the associated content.

As to claims 13 and 14, Ullman (cited above) teaches that the system can be used to conduct transactions and purchase products seen on television. It would have been obvious to one of ordinary skill in the art at the time of the invention that the URLs embedded in the video program could point to a website where the user can purchase the product shown in the associated broadcast.

As to claim 15, the user cannot select the embedded hyperlink information **702** until it has been extracted from the broadcast.

As to claims 16 and 18, Fig. 5 and 6 of Ullman teach an embodiment in which the extraction is performed at the user's digital cable box **140**.

As to claim 20, it would have been obvious to one of ordinary skill in the art at the time of the invention that a user's device would provide information about itself to ensure that the information returned is in a format the device is capable of displaying. It is desirable and necessary for a device to provide such information so that requested information can be displayed to the user in a readable format.

As to claim 21, Ullman teaches, regarding Fig. 2, *"The above embodiment can also enable personalization in the form of unique series of URLs specific to each user's unique profile"* (col.7/lines 12-14).

As to claim 22, Examiner takes Official Notice that it is well known in the art for a user's device such as a set top box to supply an account number to a source of network content to facilitate a transaction (e.g., purchasing video on-demand content). It would have been obvious to one of ordinary skill in the art at the time of the invention to extend this functionality to purchases made at sites corresponding to the embedded content identifiers.

As to claim 23, the recited functionality "wherein the identifier is used to notify a network operator that network content is not properly synchronized with the broadcast content" is inherent in the system taught by Carro. Since the universal time-table **701** taught by Carro is not updated until after the identifier and corresponding URL has been

extracted, the extraction of the new identifier which necessitates the updating of table inherently notifies the network operator that the network content (e.g., table 701) is not properly synchronized with the broadcast content and thus needs to be updated.

As to claim 24, the rejection of claim 1 is incorporated herein. As to the recited "database associating web content identifiers with corresponding web content relating to items that are subjects of broadcast programming," Carro teaches that the channel information server *"searches into its database the hyperlinks GPS-time intervals 1103 and identifies the hyperlinks 1104 and 1105 associated with selected GPS-times"* [0108]. The recited "embedder for embedding the web content identifiers into broadcast programs, the embedder using the items that are subjects of the broadcast programming to select web content identifiers for embedding into the broadcast programming" is equivalent to the URL encoder taught by Ullman (Fig. 2, element 8). The recited "web site control operative to extract the web content identifiers and ensure that the corresponding web content is posted at said URL when corresponding broadcast programming is broadcast," is inherent in extracting the URL from the video broadcast and updating universal time table **701** of Carro.

As to claim 26, Fig. 5 and 6 of Ullman teach an embodiment in which the extraction is performed at the user's digital cable box **140**.

As to claim 27, Carro teaches that the channel information database can be searched by timestamp to find the URL corresponding to the associated item [0108] but does not explicitly teach that the URL can be located by searching the database for the item name. Fig. 7 of Carro teaches that the database contains a timestamp, link name,

and link URL. It would have been obvious to one of ordinary skill in the art at the time of the invention that the encoder taught by Ullman could encode any text into the VBI of the broadcast program, including item name, as recited, and that the appropriate network content or URL could be located in the database taught by Carro by using an item name query instead of the timestamp query taught by Carro.

As to claim 28, Ullman teaches that the encoder encodes a URL associated with the content featured in the live broadcast. The URL taught by Ullman is equivalent to the recited "a web content identifier."

As to claim 29, the systems taught by Ullman and Carro are inherently capable of working with live broadcast television. As to the recited pre-recorded programming, Fig. 19-31 of Carro teach an analogous embodiment which is synchronizes network content with recorded broadcast content during playback of said recorded content.

Claims 3, 4, 9, 10, 19, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ullman in view of Carro as applied to claims 1 and 24 above, and further in view of Levy et al. (Pub. No.: US 2002/0162118).

As to claim 3, Ullman and Carro teach that the system can imperceptibly encode a URL or identifier into a broadcast, but do not explicitly teach the recited "video watermark." In an analogous system for synchronizing network content with corresponding broadcast content, Levy teaches, "[t]he content ID...is preferably embedded within the content via digital watermarking technology or other steganographically [sic] embedding method" [0014]. It would have been obvious to one

of ordinary skill in the art at the time of the invention to utilize the watermarking technique taught by Levy in the encoding system taught by Ullman and Carro to take advantage of advances in digital broadcasting technologies.

As to claim 4, Levy teaches that the network content identifier is embedded in the broadcast content prior to being distributed to the user. Levy teaches, "[t]he term 'content' is defined broadly herein to include audio, video, text, graphics, and/or still images...[also] audio signals, video signals, text, movies, commercials, advertisements, programming (both TV and computer programming), scripting, and so forth" [0032], thus it would have been obvious to one of ordinary skill in the art at the time of the invention that the watermark taught by Levy could be embedded in the audio portion of a program as well as the video portion.

As to claim 25, the recited video and audio watermarks are taught by Levy as applied to claims 3 and 4, respectively.

As to claims 9 and 10, Carro teaches that the system *"relates generally to techniques for integrating broadcast and computer systems, and more particularly to a system and a method for enhancing radio or television programs"* [0001]. It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the audio watermarks taught by Levy to embed content identifiers in the audio of a radio program to enable enhancement of radio programs, as taught by Carro.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ullman in view of Carro and Levy as applied to claims 3, 4, 9, and 10 above, and further in view of Linnartz et al. (Pub. No.: US 2002/0152388).

As analyzed above, Ullman, Carro, and Levy teach that the extraction of the network content identifier from the broadcast content can take place at the user's device, but do not explicitly teach that the user's device can be a cell phone, as recited. Linnartz teaches an analogous method for extracting a digital watermark from an audio signal using a cellular telephone [0049-53]. Examiner takes Official Notice that it is well known in the art for a cellular telephone to have Internet access that would allow it to view the corresponding network content and to have the capability to receive broadcast digital video and audio signals. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the watermark extractor taught by Levy with the cell phone taught by Linnartz to enable a user to decode embedded watermarks in content received on a cellular telephone. This would have been desirable to allow advertisers to take advantage consumers who receive audio and video content on their cell phones who represent a growing and largely untapped source of advertising revenue.

(10) Response to Argument

Applicant's arguments filed 03 June 2009 have been fully considered but they are not persuasive. With respect to claims 1 and 2, Appellant alleges:

The combined teachings of Ullman and Carro fail to suggest [the claimed] method of synchronizing broadcast content with dynamic network content at a

network address because they lack the act of synchronizing by posting the identified network content to the network device, which is then responsive to request for this content via the network...Ullman and Carro simply teach ways of looking up network content relating to a video broadcast. Ullman uses a direct look up method using URL codes decoded from the Vertical Blanking Interval of video, while Carro uses an indirect look up using time and channel information to look up corresponding URLs. These references fail to teach a synchronization method as claimed because they do not suggest posting the identified network content on a network device located at the network address, which is then responsive to requests for that posted network content. (Appeal Brief, pg. 9-10)

The Examiner respectfully disagrees. As cited in the rejection of claims 1 and 2, Fig. 2 of Ullman teaches a system in which a Sever URL Decoder **24** receives a video signal with an encoded URL, the content of which is related to the content of the video program in which said URL is embedded, "strips out" said URL from the video signal and delivers said URL(s) to Internet server **28**, such that the website corresponding to the embedded URL may be delivered to the user's home computer simultaneous with the transmission of the video content to the user. Specifically, Ullman teaches:

In another preferred embodiment shown in FIG. 2, the uniform resource locators (URLs) are encoded into the video in the same manner as described above...In this embodiment, the URL decoder 24 is located at the server site, as opposed to the subscriber location. When the decoder 24 receives the video program signal, it strips out the URL codes on line 21 of the VBI and delivers these codes independently to an Internet server 28. The URL code is then subsequently delivered over the Internet 20 to the user PC 16. Simultaneously, the video is broadcast over conventional broadcast or cable transmission means 36 to the user's personal computer 16. (col. 5/line 58-col. 6/4)

Ullman further discloses that the displaying of the web sites associated with said URLs is synchronized so that said web sites are displayed simultaneously with the corresponding broadcast video content. Specifically, Ullman teaches:

The actual retrieved Web pages **102**, referenced by the URL, are optionally time stamped to be displayed on the computer screen when predetermined related video content is displayed in the video window, thus, enlightening and enhancing the video presentation by providing in-depth information related to the video content thereto. Another section on the screen is also preferably used to represent an operational control panel. This control panel provides a list of the URLs that have been broadcast and correspondingly received by the computer **16**. This control panel is updated to add a URL code each time a new URL code is received by the PC **16**...As another example, a user could be watching a program relating to financial news. While the narrator is shown discussing high tech stocks, Web pages corresponding to detailed financial performance information on high tech stocks, environment and characteristics can be displayed with the video on the computer screen. (col. 8/lines 22-62)

Though the above example discloses displaying both the video content and the corresponding network content on the same device, Ullman further discloses an alternate embodiment of the invention in which, "[T]he user can view the interactive program using a television set **114** or other display monitor in conjunction with the display screen of the personal computer **16**. In this embodiment, the relevant Web pages are shown on the personal computer **16** while the video program is displayed on the television monitor **114**" (col. 9/lines 4-11).

As stated in the above rejection, though Ullman discloses synchronizing video content with corresponding network content, Ullman does not explicitly disclose "posting said content to a network device." Fig. 8 of Carro, as cited above, discloses an analogous method of synchronizing video content with corresponding network content in which the URLs corresponding to the network content are posted to a website that a user can reference. The Examiner maintains that one of ordinary skill in the art at the time of the invention would recognize that the combined teachings of Ullman and Carro, when considered as a whole, teach a system in which network content (the embedded

URLs) are posted to a network device (the Internet server hosting the URL table of Fig. 8 of Carro) simultaneously with the delivery of the corresponding network content to the user in a manner equivalent to that of the claimed method.

Regarding claim 1, Appellant further alleges:

Relative to Ullman, Carro only adds that the user device can look up the URLs through a database in the channel information server by providing the channel information server with the viewing time. The channel information server in Carro simply stores a table that matches time intervals with URLs. The network content that is identified by these URLs is not posted to the network device at the network address after that network content is identified as claimed. There is no posting of 'the corresponding network content' to the channel information server or the web servers at the identified URLs after the network content has been identified. Likewise, in Ullman, there are no postings to the Internet server as claimed. Thus, one of skill in the art could not find the necessary teachings to assemble all of the elements of a method for synchronizing broadcast content with dynamic network content posted at a network address after the network content is identified as claimed because neither one teaches posting network content in the manner claimed. (Appeal Brief, pg. 11-12)

The Examiner respectfully disagrees. As cited above, Ullman teaches that a list of URLs embedded in the video (substantially similar to that of Fig. 8 of Carro) is presented to the user, said list being continuously populated as said URLs are "stripped" from the video (see Ullman col. 8). The Examiner maintains that the combined teachings of Ullman and Carro when considered as a whole teach a list of URLs posted at an Internet server that is continuously updated as said URLs are stripped from a video program, such that that updating of the list and the posting of the corresponding network content (the URLs) is synchronized with the delivery of the video content to the viewer.

With respect to claim 5, the Appellant alleges:

Regarding claim 5, the elements of claim 5 are not inherent in Fig. 2 of Ullman. As explained at col. 5, line 62, to col. 6, line 2 of Ullman, the URL decoder 24 strips out the URL codes and sends them to Internet server 28, which delivers the URL code to the user PC 16. The posting of network content to the network device at the address represented by those URL codes is not discussed, and therefore, there is no teaching how or when that posting occurs. (Appeal Brief, pg. 12)

The Examiner respectfully disagrees. With respect to the embodiment disclosed in Fig. 2, Ullman, as cited above, explicitly teaches that the Server URL Decoder **24** automatically detects and strips the embedded URLs from the video signal and posts said stripped URLs to Internet server **28** (col. 5/62-col.6/4)

With respect to claim 6, the Examiner respectfully submits that the Appellant has mischaracterized the rejection based on inherency set forth in the previous rejection. Claim 6 recites merely recites that "the dynamic network content comprises sets of HTML content, each set corresponding to a particular item, each set being prepared prior to broadcast of programs relating to the particular items." As analyzed above, the dynamic network content taught by Ullman is itself URLs relating to the corresponding content of the video program. The Examiner maintains that updating a website comprising a list of identified URLs would, such as that taught by Fig. 8 of Carro, would inherently require posting HTML content (the updated data contained in said website table) to a network device.

With respect to claim 7, Appellant allegation that,

Ullman's suggestion that its system can be used to direct user's to the Internet to buy products does not lead to the conclusion that Ullman's method teaches the claimed method of synchronizing dynamic HTML content about a particular product or service with a broadcast of a shopping program to sell the product or service. The reason for this is that there is no suggestion in Ullman that the network content identified by the decoded URLs is posted to the network in a

manner that synchronizes it with the broadcast. Ullman's network content can be posted at any time, and there is no disclosure in either Carro or Ullman that network content is posted in a manner to synchronize it with a broadcast as claimed (Appeal Brief, pg.13),

is clearly in error. As cited above, Ullman explicitly teaches that the network content corresponding to the broadcast content is synchronized with the broadcast content such that the relevant network content is displayed simultaneously with the broadcast content. Ullman discloses exemplary functionality in which while a user is watching a music video the network content being displayed is biographical information about the band, a link to the band's upcoming concert schedule, or web pages comprising downloadable audio clips of the band's music (col. 8/41-56). The Examiner maintains that providing network content comprising Internet content about products or services corresponding to a broadcast program advertising said products or services is an obvious variant of Ullman's disclosed functionality of displaying network content comprising a concert schedule and downloadable music clips of a particular band while said band's music video is being played on a video program.

With respect to claim 8, Appellant alleges, "The rejection of claim 8 relies on the same incorrect assumptions as claim 6. Further, there is no suggestion in the cited art that identifiers are embedded in live broadcasts to synchronize the live broadcasts with dynamic HTML content accessible at the network address" (Appeal Brief, pg. 13). The Examiner respectfully disagrees. As cited above, col. 8 of Ullman clearly teaches that the identifiers embedded in the video program synchronize the corresponding network content with the content displayed in said video program.

With respect to claim 11, the Examiner suggests that Applicant has mischaracterized the teachings of Ullman and Carro, as well as the rejection set forth above. Claim 11 recites that the "identifiers enable synchronizing of dynamic network content accessed by users at a single URL with broadcast content, and also provide a link to network information about the broadcast content." Fig. 8 of Carro clearly teaches that all the network content is collected at the web servers **804** which is accessible at URL **803** and which displays hyperlinks to information about the network content. Further the combined teachings of Ullman and Carro teach that the hyperlinks displayed in universal time table 802 are dynamically synchronized in that the table is synchronously updated as the URLs are extracted from the video program by Ullman's Server URL Decoder.

With respect to claim 24, the Examiner maintains that Carro, as cited in the rejection teaches the recited database. Carro teaches that the channel information server *"searches into its database the hyperlinks GPS-time intervals 1103 and identifies the hyperlinks 1104 and 1105 associated with selected GPS-times"* [0108]. As to the recited embedder for embedding web content identifiers into broadcast programs, as Ullman teaches that the Server URL Decoder extracts web site identifiers from the received video feed, said identifiers used to synchronize the identified web content with the video program, the Examiner maintains that the recited embedder is inherent in producing the video program with the embedded URLs taught by Ullman. Further, as the combined teachings of Ullman and Carro teach that the website 802 taught by Fig. 8

of Carro is updated as the URLs are decoded, the Examiner maintains that the recited "website control" is inherent in performing said updating of the website taught by Carro.

With respect to claims 3, 4, 9, 10, 19, and 25, Appellant alleges:

"[t]he Office correctly notes that Levy teaches applications of watermarking in TV signals. Levy does not teach the claimed aspects of synchronizing broadcast and network content that are missing from Ullman and Carro as noted above, nor does it suggest such an application for digital watermarking. (Appeal Brief, pg. 14)

However, this allegation is clearly in error as Levy explicitly states, "[t]he present invention relates to using content identifiers with interactive television systems, and is particularly illustrated in the context of digital watermarking" ([0003], emphasis added).

The Examiner further notes that of the above listed claims, only claims 19 and 25 recite a digital watermark and that Appellant's allegations regarding Levy's teachings are not applicable to claims 3, 4, 9, or 10. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As the Examiner maintains that Ullman and Carro teach all of the previously recited claim limitations, the rejection of claims 3, 4, 9, 10, 19, and 25 should also be maintained.

With respect to claim 17, Appellant alleges:

Linnartz references a mobile phone that detects a watermark and decodes a URL. It does not teach the claimed aspects of synchronizing broadcast and network content that are missing from Ullman and Carro as noted above, nor does it suggest such an application for digital watermarking. (Appeal Brief, pg. 15, emphasis added)

The Examiner notes that neither claim 17 nor any of the claims from which claim 17 depends recite the alleged "application for digital watermarking," which

application is only recited in claims 19 and 25. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The Examiner maintains that Ullman and Carro teach all of the previously recited limitation of synchronizing broadcast and network content. In light of Appellant's admission that Linnartz teaches the functionality actually recited by claim 17, the rejection should also be maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Ryan Stronczer/

Examiner, Art Unit 2425

Conferees:

/Brian T. Pendleton/

Supervisory Patent Examiner, Art Unit 2425